

## THE OFFICE OF CONTRACTING AND PROCUREMENT

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### NOTICE OF FINAL RULEMAKING

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The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 202(a) and 204 of the District of Columbia Procurement Practices Act of 1985, as amended, ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§2-302.02(a) and 2-302.04), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of its adoption of the following final rules, amending Chapter 33 of Title 27 of the *District of Columbia Municipal Regulations (Contracts and Procurements)*. The proposed rules are intended to amend those sections of Chapter 33 of Title 27 *D.C. Municipal Regulations*, which concern contract cost principles in order to clarify the contractor's responsibility in establishing cost reasonableness.

The rules were approved as proposed rules on January 17, 2003. No substantive changes have been made to the text of the proposed rules, as published in the Notice of Proposed Rulemaking in the *D.C. Register* on February 21, 2003, 50 at 1751.

The Council of the District of Columbia approved these rules on October 23, 2003, pursuant to section 205(a) of the Procurement Practices Act (D.C. Official Code §2-302.02(a)).

## CHAPTER 33

### CONTRACT COST PRINCIPLES

*Section 3307 is amended to read as follows:*

#### **3307 DETERMINING REASONABLENESS**

- 3307.1 The contracting officer shall determine a cost to be reasonable if it does not differ from or exceed in amount that which would be incurred by a prudent person in the conduct of a competitive business, in accordance with the provisions of this chapter.
- 3307.2 In determining the reasonableness of a given cost, the contracting officer shall consider the following factors:
- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

- (b) The restraints or requirements imposed by generally accepted sound business practices, arms length bargaining, federal and District laws and regulations, and contract terms and specifications;
- (c) The action that a prudent business person would take, considering responsibilities to the owner of the business, employees, customers, the District, and the public at large;
- (d) Any significant deviations from the established practices of the contractor that may unjustifiably increase the contract costs; and
- (e) Any other relevant factors.

3307.3 Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints.

3307.4 No presumption of reasonableness shall be attached to the incurrence of costs by a contractor.

3307.5 If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.